

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK


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UNITED STATES OF AMERICA	:	19-CR-374 (JMF)
	:	
- v -	:	<u>ORDER</u>
	:	
MICHAEL AVENATTI,	:	
	:	
Defendant.	:	
	:	
-----X	:	

JESSE M. FURMAN, United States District Judge:

As discussed on the record today, the attached letters are hereby unsealed.

SO ORDERED.

Dated: January 31, 2022
New York, New York



JESSE M. FURMAN
United States District Judge

January 29, 2022

BY EMAIL – VIA FEDERAL DEFENDERS
EX PARTE IN CAMERA

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

RE: United States v. Michael Avenatti
19 Cr. 374 (JMF)

Dear Judge Furman:

Defendant submits this in camera, ex parte letter in support of his application to recall Mr. Janklow as a defense witness. Mr. Janklow's testimony during the defense case in chief is necessary to elicit from him relevant information about the defendant's extensive work on Ms. Daniels's book from the date she signed the contract to its October 2018 publication, which bears directly on defendant's state of mind and intent, and whether defendant was entitled to a fee and the amount of such fee. Mr. Janklow's testimony is also necessary to impeach Ms. Daniels's testimony about the book and its sales, allegations against Mr. Janklow's book agency, and the allegation that defendant's claims to Ms. Daniels regarding the publisher balking at paying her due to publicity were untrue. It is also necessary to impeach Elizabeth Beier's testimony, elicited on Friday by the government, that the defendant was primarily responsible for coordinating Ms. Daniels's book-related publicity and bears responsibility for any shortcomings, and the suggestion that Ms. Daniels was a cooperative, communicative partner in the book project.¹

Among other things, as set forth in the email and text messages attached as Exhibit A, the defense expects Mr. Janklow to directly refute Ms. Daniels's testimony that 390,000 of her books were sold in the first three weeks of publication

¹ Ms. Beier is still on direct in the Government's case-in-chief. It is possible, and perhaps likely, that Ms. Beier will provide additional testimony on Monday that will also be directly contrary to Mr. Janklow's knowledge and memory.

(Tr. at 1085) and to directly refute Ms. Beier's testimony that the defendant bears responsibility for the poor publicity and promotion of Ms. Daniels's book and never threatened any legal action (Tr. at 1232-34), including through the introduction of Ms. Beier's prior inconsistent statements to Mr. Janklow. Mr. Janklow's testimony is also necessary to impeach Ms. Daniels's claims that Mr. Janklow improperly withheld royalties and other accounting information about the book sales from her (Tr. at 1088) and the suggestion that there was never any dispute with the publisher about book payments as defendant claimed. See, e.g., United States v. Watson, 669 F.2d 1374, 1383 (11th Cir. 1982) (constitutionally erroneous exclusion of witnesses offered by defense to impeach government's key witness was not harmless beyond a reasonable doubt and required reversal and retrial); United States v. Davis, 639 F.2d 239, 245 (5th Cir. 1981) (district court committed constitutional error in denying defendant's request to call two character witnesses to impeach an informant's credibility).

For each of these reasons, defendant respectfully requests the opportunity to recall Mr. Janklow in defendant's case-in-chief. Defendant is agreeable to examining Mr. Janklow via videoconference to minimize the inconvenience to the witness.

Respectfully Submitted,

/s/

Michael J. Avenatti
Defendant

EXHIBIT A

To: Michael J. Avenatti[mavenatti@eaganavenatti.com]
From: Luke Janklow
Sent: Mon 11/19/2018 4:12:11 PM
Subject: FW: Stormy

Hey there,

I know you have other fish frying but we need to deal with this.....Her camp continues to exhibit a lack of the fundamental movements here i.e. St Martin's doesn't care one whit about press overseas.

I've thought about this and here is where I land.....She sabotaged the book – there is no question. I'm actually stunned at how effectively she did.....I think we should offer to split the difference and give the publisher the acknowledgement of the elephant in the room. I think we should say \$100k and we're done.

That is my opinion obviously and I want to hear yours.

Lemme know

L

From: Sally Richardson [mailto:sally.richardson@stmartins.com]
Sent: Monday, November 19, 2018 10:42 AM
To: Luke Janklow
Subject: Fwd: Stormy

luke, the plot thickens. i need your help here. can we talk?

----- Forwarded message -----

From: Stormy's PR <stormydanielspr@gmail.com>
Date: Mon, Nov 19, 2018 at 6:00 AM
Subject: Stormy
To: <Sally.Richardson@stmartins.com>, <John.Karle@stmartins.com>, Tracey Guest
<tracey.guest@stmartins.com>, <elizabeth.beier@stmartins.com>

Hi folks,

Apologies for mass email, just now sure who the right person to contact is with this question.

Stormy gave a magnificent speech to a packed house at the Oxford Union yesterday, which should be posted to YouTube shortly. Saturday she did a great interview promoting the book on Irish TV on The Ray D'Arcy Show.

She asked me to follow up about the third payment, which she says was due a few weeks ago upon completion of three weeks of press tour for the book. When can I tell her to expect that payment?

Pls indulge me for one moment: If stormy had a film coming out she would do any and all promotion available to her no? Obviously that is not a global stage but the principles are the same. Right now her book is 295 on Amazon (not exciting yet)- if she grabbed this situation by the horns with gusto she could get to #1. how amazing would that be? If the only reason she is doing no spots today is Kimmel that's insane - he's not going to cancel her with what's going on and if he does he'll look like a fool for doing so. She should be out there selling - she deserves it and we deserve it. Just saying - ok done now thx
L

Is she going to tweet about the book so far only a mention of the grove appearance in LA

10/2/18, 12:25 PM

Tracy is going to try and cook something up for daytime but is not overly hopeful - she feels like the hedging after the view appearance turned these folks off - there is still this mystery of who spoke to nbc because abc thought they had it - I also just got off the phone with my pal dan Harris who hosts nightline and he's going to see if he can book her

Now Kevin showed her the op ed draft we never engaged?? Should this be dealt with at all with Denver ? I think Kevin needs to own this

Can elizabeth reach out to Denver on the op ed side? To take responsibility? Or just leave it?

Leave it.

Ok

10/2/18, 9:38 PM

What did you think? I'm just catching up on everything now - she was good but it was a lot of dick

10/3/18, 7:29 AM

How's things today?

Text message
10/3/18, 7:56 AM

How's things today?

iMessage
10/3/18, 10:52 AM

whoops 39th not 38th

<https://yelp.to/qTKq/57mFOpqFIQ>

Thx

On way

Marcene Avenatti

10/4/18, 9:28 AM

Hello there - you ready for your boxing shoot?

Also S & Denver are fucking morons this is hard to watch and be party to - sally is going to call him and let him have it hopefully and - what do we have to lose?! This book tanking is not good for anyone or anything

Don't know when you dropped off call me and I'll fill you in

10/4/18, 12:07 PM

You cool for a call w sally now ?

10 min

Ok standing by

10/4/18, 2:26 PM

Just spoke to elizabeth at st Martins - Walmart has sold 19 copies - chain wide - so far. After ordering 30,000 + - that's how dire the sales situation is - I'm not trying to make you nuts I just want you to know what they're dealing with. The retailers are going to start sending books back and the publisher needs to be able to tell them about press to try and stave this so can we pls lock CNN? This is an important strategic thing - they are sounding very gutted and I want to keep them as optimistic as possible thx a long segment on don lemon would be great in my opinion and Anderson made it sound to me like that we're not excited about having her...thx

Don lemon has been confirmed for Monday at 10 but let me tell Denver and Stormy. The publisher can tell outlets now.

Ok thx a lot

10/5/18, 8:14 AM

Just a reminder that Stormy has her museum of sex event on Monday from 6-8.....

10/7/18, 10:16 AM

Yo will call you shorty ok?
You ok? Crazy bullshitb

Yes

Can I call you later?

Not sent

Tried you

Text message
10/7/18, 10:48 AM

Tried you

iMessage
10/8/18, 12:56 PM

She sold 256 hardcover books on Friday.....nationally - I think the publisher should let her have it and disavow her if any delusions but I defer to you

Text message
10/8/18, 12:57 PM

She sold 256 hardcover books on Friday.....nationally - I think the publisher should let her have it and disavow her if any delusions but I defer to you

iMessage
10/8/18, 12:59 PM

Not now.

Trust me

Of course

10/8/18, 2:50 PM

From Elizabeth Beier :

We're not sure where Stormy is. Last communication is from Denver an hour ago, saying they're running "very late". No responses to John's texts to check ETA since.

10/8/18, 7:32 PM

That don lemon shit was perfect - she should be on tv like that as much as possible - we gotta find one more spot before Mahar

10/9/18, 8:20 AM

Just finishing a staff meeting - will ring as soon as done ok?

Stormy missed the AP interview. Call me ASAP

Call me pls

Tried you call me

Text message
10/9/18, 8:39 AM

Tried you call me

iMessage
10/10/18, 12:25 PM

At the dentist will ring when our

Out

10/10/18, 2:27 PM

The book - miraculously - is #11 on the Sunday Times list and combined E and print it's #7

She is a nytimes besteller - despite her efforts

January 29, 2022

BY EMAIL VIA FEDERAL DEFENDERS
EX PARTE

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

RE: United States v. Michael Avenatti
19 Cr. 374 (JMF)

Dear Judge Furman:

In response to the Court's Order earlier this evening relating to Mr. Luke Janklow (Dkt. 320), Defendant objects to the disclosure of the filing to the Government because it discloses defense strategy and work product of the defendant (i.e., which witnesses are impeached by Mr. Janklow's expected testimony and the importance of the attached correspondence submitted with the request). This is of particular concern because Ms. Elizabeth Beier is in the middle of direct examination by the Government and has already testified inconsistently with the attached correspondence. If disclosed, it will highlight for the Government defendant's anticipated cross-examination and impeachment of the witness, thus permitting the Government to correct and confirm her testimony prior to the end of its direct examination. Further, the Government's case remains open, thus permitting the Government to potentially rectify the issues disclosed in the filing and the attached correspondence prior to resting.

For each of these reasons, Defendant respectfully requests that the Court maintain the documents under seal until Mr. Janklow completes his testimony during defendant's case-in-chief, if permitted.

Respectfully Submitted,

/s/
Michael J. Avenatti
Defendant